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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 554 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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SATPAL SING D PUNJABI

Versus

STATE OF GUJARAT  
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Appearance:

MR JIVANLAL G SHAH, Sr. Counsel with  
MR PRAFUL J. BHATT, Advocate for Petitioner  
MR K.P. RAVAL, ADDL. PUBLIC PROSECUTOR for Respondent No. 1  
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CORAM : MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE D.C.SRIVASTAVA  
Date of decision: 17/06/1999

ORAL JUDGEMENT (Per R.K.Abichandani,J.)

The appellant has challenged his conviction and  
sentence of life imprisonment awarded by the Sessions  
Court, Baroda in Sessions Case No. 83/89, for the offence  
under Section 302 of the Indian Penal Code.

2. The appellant and the original accused No.2 Anitaben, who was his elder brother's sister, were tried for the offence under Section 302 of the Indian Penal Code, on an allegation that with a view to remove the hurdle in their relationship, the appellant on 18th October, 1988 around 8.30 P.M closed his house from inside, poured kerosene on his wife Prabhaben and set her aflame, which resulted in her death in the hospital on 25.10.1988.

The prosecution version is that at the time when the incident occurred, there was commotion and on hearing that, witnesses Suresh Amrutlal Sonawane and Suresh Keshavrao Pawar, who were residing on the ground floor of the building known as Chauhanni Chawl, went up-stairs and as the door was not being opened, they broke it open and on going inside the house, they saw that Prabhaben was lying covered with a quilt in the balcony, which was beyond the room. According to the prosecution, there was a stove with wicks showing out, lying in a disorderly manner in the balcony and kerosene was spilt on the floor. There were burnt pieces of cloth scattered around. The victim was taken to the hospital. Initially, under the threat from her husband, which is said to have been given, while she was being carried in the ambulance, she had given statements indicating that she had set herself on fire, but later when her mother Lilavati arrived on 22nd October, 1988, she had disclosed that it was her husband who had set her on fire after pouring kerosene. According to the prosecution, she therefore gave her statement Ex.31, which should be treated as a reliable dying declaration, in which she made the allegation that her husband who had illicit relation with her sister-in-law, had poured kerosene on her body and set her on fire by lighting a matchstick. According to the prosecution, the fact that the appellant did not open the door and it had to be broken open after the incident, coupled with the dying declaration Ex.31, clearly establish the guilt of the accused No.1. The original accused No.2 was acquitted by the trial Court and no acquittal appeal has been preferred against that part of the decision.

3. The defence of the appellant was of total denial, and he has in his written version, which is at Ex.33, stated that on 18.10.1988, because he had given Rs. 200 to his mother from his salary, his wife Prabhaben had become very angry and had started abusing him. She threw the child in anger on the cot and as the child started crying he picked him up and went in the balcony, but before the child could stop crying, he heard a screams

and shouts to save from the room. He therefore got stunned and went near the room. He pushed open the door which was closed and saw that his wife Prabha was burning. He saw that the stove was lying disorderly and kerosene was spilt on the ground. Realising the situation, he immediately put the child on the cot and covered his wife with a quilt. Thereafter, neighbours had come running there and his mother, brother and 'Mamu' (Suresh Pawar) had also come. He had thereafter, entrusted his son to his mother and told her that he would phone up and inform at Ahmedabad. According to the appellant, thereafter on 21.10.88 Mahendra Singh (Masa of his wife) had abused him in presence of his mother-in-law Lilavati and had given threats. When the appellant replied back, Mahendra Singh told him that he would teach him a lesson and that he was a man with great influence in the police. Thereafter, Mahendra Singh had got a false case registered against him in Sayajiganj Police Station. He was ultimately acquitted in that criminal case. He produced a certified copy of that decision.

4. The trial Court was much impressed by the dying declaration Ex.31, which was recorded on 22nd October, 1988 by the police and has accepted the version of Lilavati, mother of the victim that her daughter Prabhavati told her that she had given wrong statements earlier because she feared that her husband might kill her son and after the son was brought to her from the house of her mother-in-law, she came out with the truth by stating that her husband had poured kerosene on her and set her on fire during the incident. The trial Court found that the circumstantial evidence that the appellant was found in the house where the occurrence had taken place and that as he did not open the door, it had to be broken open and Prabhavati was lying covered by a quilt on the floor after being burnt, fully supported the prosecution version.

5. It has been contended on behalf of the appellant before us that there was evidence on record which indicated that the possibility of Prabhaben having committed suicide cannot be ruled out. It was argued that Prabhaben had told her relatives that she might commit suicide and even in her first time declaration Ex.21 as well as the F.I.R reflected in Ex.26, she had stated that she had poured kerosene on herself and set herself on fire. The learned Counsel argued that from this evidence it was clear that the possibility of her having committed suicide cannot be ruled out. The learned Counsel also pointed out that the initial information telephonically given which is mentioned in

the Police yadi Ex.18 was of accidental death due to bursting of the stove while she was cooking food. According to the learned Counsel for the appellant, the prosecution has failed to establish the guilt of the accused beyond reasonable doubt and that the trial Court had committed an error in relying upon the statement of Prabhaben Ex.31, recorded by the police on 22nd October, 1988. He argued that it is for the first time in that statement that the story of the appellant having given threats to Prabhaben figures and that this had happened because on the previous evening i.e. on 21st October, 1988, there was some altercation between the appellant and witness Mahendra Singh, who is the husband of sister of Prabhaben's mother Lilavati. The said witness Mahendra Singh had filed a complaint against the appellant on 21st October, 1988 for an offence under Section 506(2) of the Indian Penal Code and the learned Chief Judicial Magistrate, Baroda had, on 26th Sept. 1989, acquitted the appellant for that offence in Criminal Case No.3090/88. It was submitted that because of the said incident of 21st October, 1988, an attempt was thereafter made to implicate the appellant by getting a further police statement recorded of Prabhaben, to make her retract from her earlier statements in which she had stated that she had set herself on fire.

6. The learned Public Prosecutor strongly contended that the circumstantial evidence clearly established that the appellant alone could have caused the death of his wife Prabhaven. It was contended that the conduct of the appellant in not opening the door when Prabhaven had received burns and was lying on the floor, showed his guilty mind. If it were a case of suicide, then there was no reason for the appellant to have kept the door closed and in fact his normal conduct would have been to open it and seek help of the neighbours. It was contended that the earlier statements were given by Prabhaben in view of the threat given by the appellant to her in the ambulance while she was being taken to the hospital, but once her child was retrieved on 22nd October, 1988 when her mother Lilavati had come to see her, she warded off her fear and came out with the true version that it was her husband who had set her on fire. The learned Counsel argued that the Sessions Court had rightly relied upon the dying declaration Ex.31, which was recorded by the police on 21st October, 1988 for holding the appellant guilty of the offence.

7. As noted above, a complaint was filed against the appellant by Mahendra Singh 'Masa' of Prabhaben on 21.10.1988 for the offence punishable under Section

506(2) of the Indian Penal Code. It appears from the record that Prabhaben died on 25.10.1988. From the Postmortem notes which are at Ex.13, it appears that the cause of her death was septicaemic shock following burns. It was noted in column 18 that there were no other injuries beyond the burns, which were noted in column 17 and that there was no fracture.

8. It has come in evidence that initially an offence under Section 498A of the Indian Penal Code was registered against the appellant and the original accused No.2 on the basis of the statement which was given by Prabhaben. The deposition of prosecution witness Nos. 1 and 2 shows that after the incident, Prabhaben was taken to the hospital in an ambulance. There are no reliable particulars forthcoming as to who actually had accompanied amongst those who took her to the hospital. It appears that after she was admitted in the hospital at about 9.25 P.M, an entry was made by the police in the station diary to the effect that Prabhaben who had received burns at 20.30 hours due to bursting of a stove while she was cooking vegetable, was brought to the hospital for treatment by Ashok Dinanchandra Punjabi and that she was in a serious condition. It appears that the Deputy Mamlatdar who was sub-divisional magistrate of the city, was called to record the dying declaration of the woman. The statement of Prabhaben was recorded by the Executive Magistrate-cum-Mamlatdar Naginchandra Maganlal Soni, P.W 6 between 5.AM and 5.15 A.M on 19th October, 1988. In that statement Ex.21, Prabhaben had disclosed before him that on 18th October, 1988 before she started cooking vegetable at night, there was a quarrel between her and her husband. She stated that her husband was on good terms with his sister-in law, while he was not behaving well with her and she therefore, poured kerosene on herself and set herself on fire. At that time, her husband was in the house and had saved her and she was taken to the hospital.

After the statement Exh.21 was recorded by the Executive Magistrate, another statement was recorded by the police which is at Ex.26. On seeing the record of the proceedings, it appears that in the file of miscellaneous papers, the first document is the FIR given by Prabhaben. The contents of Ex.26 are the contents of that FIR minus the initial formal portion showing particulars against the printed items. In this statement Ex.26, which is also treated as a dying declaration, Prabhaben had stated before the police that the appellant was having illicit relations with the original accused

No.2 Anitaben, who was his elder-brother's wife and therefore, she had objected, as a result of which he was ill-treating her and beating her. It was stated that a week prior to the incident there was a quarrel between her and her husband over this issue, but her sister's husband Mahendra Singh who came from Ahmedabad alongwith other relatives had intervened and there was a compromise. It was further stated by her that on 18.10.1988 in the evening at about 6'0 Clock, her husband had come to the house and had a quarrel with her. He had insisted that he wanted to go to his sister-in-law's place, but she had refused, stating that she would not allow him to go under any circumstances. Despite this he kept on insisting, and, around 8'0 Clock when he had again stated that he wanted to go, she had told him that if he goes, she would commit suicide by burning herself. It was stated by her that she got agitated and poured kerosene on herself from the primus, which had wicks and set herself on fire. Her husband had thereupon gone away and on her shouts, his elder brother Ashok Punjabi and her mother-in-law had taken her to the hospital. It was stated that because of the mental cruelty caused due to her husband's having illicit relations with Anita, she had acted in this manner. This statement was given by her in presence of her "Masa" i.e. Mahendra Singh. It appears from the FIR which is in the miscellaneous papers, that the said statement was given on 19.10.1988 at 6.00 A.M.

It appears that on 22nd October, 1988, her statement Ex.31 was recorded by the police. In context of that statement, entry from the station dairy which was made on 22.10.1988 at 10.35 hours, a copy of which is at Ex.16, was made. In that entry it was written that Sardar Singh Mahendra Singh had informed that Prabhaben who was on her death bed in the hospital, wanted to give a statement that her husband Satpal Singh and his sister-in-law Anita had poured kerosene and set her on fire with a view to kill her and that the earlier dying declarations were given under threat. It would appear from the document at Ex.30 that the police had made a request to the Executive Magistrate to record her dying declaration again, but as per the endorsement below that document made by the Executive Magistrate, he had informed the police that dying declaration could not be recorded again since it was already recorded. Therefore, the Executive Magistrate did not come to record statement of Prabhaben on 22.10.1988, but the police recorded the same as per Ex.31. In that statement she had stated that while she was in the house on 18.10.1988, her husband Satpal Singh put kerosene in a glass and poured it on her

body, and, set her clothes on fire by lighting a match-stick. When she was burning, she raised cries and therefore, the nearby residents, Mamu , and other persons had come and they covered her with a quilt and made her sleep in the gallery. She had stated that she had told Mamu that she was set ablaze by her husband and that in the ambulance her husband had threatened her not to disclose to anyone that he had set her on fire and that is why, she had remained quiet. It was further stated that on reaching the hospital she was threatened that if she disclosed the truth to anyone, her two month old son will be killed. She therefore, did not disclose the truth in the earlier statements. It was further stated that thereafter in the morning of that day i.e. on 22nd October, 1988, her mother Lilavati alongwith her brother had come to the hospital and she requested them to bring the child from her husband. Thereafter, the child was brought to the hospital and, since the child was out of danger, she disclosed the correct facts to her mother. It was stated that the truth was that her husband Satpal and his sister-in law Anita had illicit relations, which she had noticed and that she was threatened that she would be killed and on 18.10.1988 she was set ablaze.

9. There is no eye witness to the incident. Suresh Amrutlal Sonawane, P.W 1 in his deposition at Ex.8 has stated that at the time of the incident he had heard some shouts from outside, which indicated that some incident had occurred on the first floor of the building in which he resided. He therefore, alongwith P.W Suresh Keshavrao Pawar and one other person had gone to the upper floor. They had released the stopper of the door and gone through the staircase to the upper floor, where they found the door of the house closed from inside. The other person who had accompanied them broke open the door by giving a kick. At that time they had seen Prabhaben lying covered with a shawl outside the room in the balcony. Her child was crying. The appellant - accused was present there. They told him to pick up the child. Others arrived there and thereafter, this witness went away. He has stated in his deposition that he had not seen her husband quarrelling with his wife. He has also stated that there was no complaint made, against the accused Satpal, to him. He has stated that he had not heard them quarrelling.

The other prosecution witness Suresh Keshavrao Pawar, P.W 3, who had also gone up-stairs, in his deposition at Ex.9 has stated that on 18.10.1988 in the evening around 8 to 9 P.M while he was in his house, he had heard loud shouts from up-stairs and therefore, he

alongwith Suresh Sonawane and one other person had gone up-stairs and at that time the door of the house of the appellant was closed from inside. They broke it open and went inside because it was not being opened. When they went inside, they saw Prabhaben who had received burns lying covered with a quilt and her child crying. The appellant was asked to pick up the child. The lady was lifted and brought in the open. Where she was found lying, there was a stove and kerosene on the floor. He had gone and phoned up for an ambulance and the lady was taken to the hospital. Panchnama of the place of scene of occurrence was drawn on the same night between 11.00 and 11.30 P.M. in which he was one of the panch witnesses. In his cross-examination he has stated that the appellant and his wife were residing on the first floor of their building and that he had never seen the original accused No.2 Anita visiting their house. The deposition of Suresh Sonawane and Suresh Pawar shows that on 18.10.1988 in the evening around 8 to 9 P.M, there were some shouts heard, indicating that some incident had occurred in the house of the appellant and therefore, these two witnesses alongwith a third person had gone up-stairs and since the door was closed and was not being opened, that third person had given a kick and broken open the door and on entering the room, they found Prabhaben lying covered with a quilt in the balcony and that she had received burns and kerosene and stove were lying on the floor. The person who had broken open the door is not examined, nor is he named by anyone. The important circumstance which emerges from the deposition of these witnesses is that when the accident had occurred, the door of the house of the appellant was closed from inside and after the incident it had to be broken open, since it was not being opened. The presence of the appellant accused in the house during the time when the incident occurred is established from the deposition of these two witnesses and even the appellant accused in his written version Ex.33 does not dispute that aspect. His defence version in substance is that his wife Prabhaben had set herself on fire by sprinkling kerosene, because of some quarrel which took place over his having given Rs. 200 to his mother. The conduct of the appellant of not opening the door and his having remained inside the room while his wife was being burnt and not seeking help from around, is pointed out as a clinching circumstance by the prosecution, which should necessarily lead to an inference of guilt against the appellant. The evidence bringing fore the circumstances of the appellant being present at the time when his wife was being burnt in a room, which was closed from inside, cannot however, be viewed in isolation. There is



positive evidence to indicate that a week before the incident Prabhaben had gone to her Masa Mahendra Singh's house at Ahmedabad and had complained against the behaviour of the appellant and at that time, she had told her relatives that if he continued to ill-treat her, she would commit suicide. Avtar Singh Hari Singh, P.W 7, who is the younger brother of Mahendra Singh, in his deposition at Ex.22, has in this context, stated that Prabhaben had come to Ahmedabad about a week prior to her death and at that time she complained that the appellant had beaten her. Therefore he alongwith his brother and others had gone to the house of the appellant and at that time they were assured that no such occasion would thenceforth arise and that they should not worry. On 18.10.1988 Mahendra Singh had received a message and they had gone to Baroda, and on going to the hospital straightway, noticed that she was burnt. In his cross-examination, this witness has stated that when Prabhaben had spoken about her harassment, she had stated that if she was continued to be harassed, she would commit suicide by burning. Thereupon, this witness advised her not to take any such step, telling her that such, quarrels often take place between husband and wife. Therefore, as per the version of this witness, Prabhaben had, a week before her death, indicated that if she was harassed, she would commit suicide.

Mahendra Singh, 'Masa' of Prabhaben, in his deposition at Ex.23 has stated that Prabhaben had complained about the illicit relations between the appellant and his sister-in-law and the ill-treatment meted out to her. He has stated that about ten days prior to the incident, Prabhaben had come to his house and that thereafter, they had gone to Baroda and on being assured about her being treated properly, they had left her with the appellant. He has stated in paragraph 3 of his deposition that on 18.10.1988, he had received a telephonic message from Baroda that Prabhaben had received burns and was admitted in the hospital. He had therefore, rushed to Baroda and on reaching the hospital he had talked with Prabhaben. She told him that she was being harassed and beaten and therefore, she had taken this extreme step. In paragraph 5 of his deposition, he has stated in his cross-examination that Prabhaben had told him that she would commit suicide by burning. It clearly transpires from the deposition of Mahendra Singh who is related to Prabhaben being her Masa, that Prabhaben had a few days back complained about the ill-treatment and that during her talk she also told him that she would commit suicide by burning herself. The significant fact which emerges from the deposition of

this witness is that when he met Prabhaben and talked with her in the hospital on the same night of the incident, she had said that she had taken this step because she was being harassed, meaning thereby that she had set herself on fire because of the harassment.

10. As noted above in her first dying declaration which was recorded by the Executive Magistrate, Prabhaben had in terms stated that she had set herself on fire by sprinkling kerosene. She gave the same version of setting herself on fire in her statement Ex.26, which was recorded by the police. The dying declaration Ex. 21 was recorded between 5.00 and 5.15 A.M on 19th October, 1988 and the statement Ex.26 appears from the FIR given by Prabhaben to have been recorded around 6'0 Clock in the morning of 19th Oct. 1988. The cumulative effect of this part of evidence namely Prabhaben having stated before her relatives at Ahmedabad a week before the incident that she would commit suicide if the ill-treatment continued, that she stated before Mahendra Singh in the hospital that she had taken this step and her immediate statements before the Executive Magistrate and the Police, would indicate the existence of possibility of her having committed suicide. The trial Court however, was much impressed by her later statement Ex.31, in which she is said that her earlier statements were given due to threats. As noted above in her statement Ex.31 she had said to have stated that she had confided in Mamu i.e. the prosecution witness No.2 Suresh Pawar, that her husband had set her on fire. This part is not at all borne out by any other evidence on record. Mamu Suresh Pawar has nowhere in his deposition stated that he was told by Prabhaben that her husband had set her on fire. Suresh Pawar also does not speak of any threat having been given by her husband, while she was being carried in the ambulance. Suresh Pawar had phoned up for the ambulance and it appears that he had accompanied others and taken her to the hospital in that ambulance. He was also one of the panch witnesses. There is no reason why he should not have disclosed such fact, if at all he had been told about it by Prabhaben. According to Suresh Pawar, when they had entered the room they saw Prabhaben already lying on the ground burnt and covered with a quilt. If she was already covered with a quilt, she was obviously covered by the appellant because it is not the case of Suresh Pawar or Suresh Sonawane that they had covered her with the quilt.

Furthermore, Mahendra Singh was a man of confidence of Prabhaben and it appears that he had got her married with the appellant. He alongwith his

brothers had reached the hospital on that very night of 18th October, 1988. If Prabhaben had feared that her son would be harmed by the appellant, she would have disclosed that fact to Mahendra Singh and others immediately in the hospital and would have asked them to bring her son to the hospital and would not have waited for that fear to come out till 22nd Oct. 1988 when her mother arrived from Punjab and saw her in the hospital. Moreover, the incident of 21st October, 1988 which led to filing of a complaint under Section 506(2) of the IPC against the appellant by Mahendra Singh seems to be a turning point, because, it is thereafter that process of involving the appellant for an attempted murder seems to have been started. All the evidence until then pointed towards Prabhaben having attempted to commit suicide. Therefore, the so-called dying declaration Ex.31 does not inspire confidence and it seems to have got up with a view to give a twist to the earlier version and implicate the appellant for an attempted murder. The totality of evidence on record creates a situation where the possibility of Prabhaben having committed suicide by pouring kerosene on herself and setting herself on fire cannot be ruled out. The benefit of doubt arising from this situation obviously goes in favour of the appellant accused.

11. It does appear from the evidence on record that Prabhaben may have committed suicide because of some ill-treatment by the appellant, which she complained of before her relatives about a week before the incident. We were surprised to note that though the case was initially registered for the offence under Section 498A of the IPC, the charge was framed only for the offence under Section 302 of the IPC and there was no allegation levelled in the charge for the offence under Section 498A of the IPC. The question regarding remand for trying the appellant for a charge under Section 498A of the IPC which could be added, was discussed, but we note that the appellant has already remained in jail for more than ten years and therefore, there is no point in now adding a charge of Section 498A and remanding the matter, because, the maximum punishment of imprisonment for the offence under Section 498A is three years.

12. In view of what we have said above, the conviction and sentence of the appellant cannot be sustained and the impugned judgement and order dated 20th July, 1991 passed by the learned Additional Sessions Judge, Baroda in Sessions Case No. 83 of 1989 is hereby set aside and the appellant - accused Satpal Singh Dinanchandra Punjabi is acquitted of the charge levelled against him and is

ordered to be set at liberty forthwith, if not required  
in any other case.

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\*/Mohandas